

The Islamic Legal System of Malaysia: A Critical View

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Abstract

Malaysia, a multi-racial and multi-religious country has chalked a fine line between politics and the governance of Islamic laws. Majority of its population, the Muslim are governed by Islamic laws. In that direction numerous Islamic laws have been introduced in the country. However, they have been under constant criticism for being ineffective. How relevant Islamic law is in Malaysia? Is it according to the Shari'ah? This research therefore provides an analysis of Malaysian legal system. The research is qualitative in nature and relies on analytical analysis. The study finds that Malaysia as a state in theory maintains itself as an Islamic state but in practice, Islam and secularism have gone side by side. The Islamic laws are reduced to a series of fines and short prison judgments that have no basis in the Shari'ah.

Keywords: Qur'an, legal system, constitution, Islamic state, Shari'ah, Malaysia

Introduction:

Malaysia is one of the few states in the world that attempts to facilitate their environment for every religion, culture, and ethnicity. It is this attitude that has led to the plurality in the legal system. Malaysia was known in her pre-colonization era as a state that "if left alone, would evolve into an Islamic state." An Islamic State being one that is governed solely by the principles of Islam and the divinely revealed scripture. The claim of the eventuality of the conformation of Malaysia into an Islamic state comes from the abundance of Islamic influence in the history of the early kings and the application of the fundamental Islamic teachings and institutions in regards to affairs of the state. This piece is shedding light upon what remains of that claim today as far as law, order and justice go. Another goal is to understand the difference between the states those were headed towards being an ideal state of Islamic fundamentalism to the multi-ethnic secular state that stands today. To fully understand the character of the state today, one must dig through the history of what was and examine how these claims of eventual evolution of a theocratic state came to be. That would require the understanding of Islam and the structure of current Islamic legal system of Malaysia.

Structure of Malaysian Islamic Legal System:

Head of State (Yang di- Pertuan Agong and the Sultans)

The Yang di- Pertuan Agong (YDPA) is constitutionally the Head of State of Malaysia who is chosen from among the kings of the states for a five-year stint at a time. As Head of State of Malaysia, YDPA is the Head of Islam in his own state, states without kings, states who appoint YDPA as Head of Islam and the federal territories.¹ The YDPA's counterparts in the respective states having monarchs are the sultans who command the same responsibilities and privileges as Head of Islam in their respective states. YDPA and sultans reserve special powers as the pinnacle of the hierarchy of the Islamic Legal system such as suspension and pardon of any verdict pronounced on any subject within their jurisdiction (state and political boundaries) by the *Shari'ah* courts.² They are also invested with the privilege such as to constitute the *Shari'ah* courts, appointing and discharging the major

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entities of the *Shari'ah* court system such as *Majlis Agama Islam Wilayah Persekutuan* member's mufti, Chief *Shari'ah* Judge and *Shari'ah* Appeal Court panel of judges, Chief *Shari'ah* Prosecutor, essentially all judicial members associated with the *Shari'ah* court.

Federal Islamic Affairs Council (*Majlis Agama Islam Wilayah Persekutuan*):

The *Majlis* is the advisory council of public servants³ to the *Yang di-Pertuan Agong* in matters pertaining to the religion of Islam.⁴ The *Majlis* consists of a chairman, deputy chairman, the Chief Secretary to the Government, the Attorney General, Inspector General of Police, the Mufti, the Commissioner of the City of Kuala Lumpur and fifteen other members all of whom must be Muslims.⁵ They advise the *Yang di-Pertuan Agong* in matters of the Religion of Islam.

The influence and legal identity of the *Majlis* is one of a corporation⁶ that is entrusted with the economic and social development of Muslims, enjoying all rights from controlling the central treasury, otherwise known as "*Baitul Māl*" such as establishing companies, investing, buying and selling properties as they see fit, to establishing schools and offering scholarships.⁷ As the guardians of the *Baitul Māl* which is the central fund of all collection of *Zakat*, property, all profits accrued from the companies established by the *Majlis* and donations made. This fund is at the disposal of the *Majlis* as they see fit to execute the social and economic welfare of the community of the Muslims. As a corporate entity, the *Majlis* is a council with perpetual succession also able to establish companies to carry out their activities⁸ and borrow from the Ministry of Finance to fulfill their duties. They are the trustees⁹ of all *Masājid*¹⁰ in the Federal states, responsible for their maintenance¹¹ and appoint all Imams and staff of the *Masjid*.¹² An affair in Islam that is very exclusive to those of impeccable character and of high faith in Allah.

"It is not for the *Mushrikūn* (polytheists, idolaters, pagans, disbelievers in the Oneness of Allah), to maintain the Mosques of Allah (i.e. to pray and worship Allah therein, to look after their cleanliness and their building, etc.), while they witness against their own selves of disbelief. The works of such are in vain and in Fire shall they abide. The Mosques of Allah shall be maintained only by those who believe in Allah and the Last Day; perform Al-Ṣalāt (Prayer), and give Zakāt and fear none but Allah. It is they who are expected to be on true guidance"¹³.

To summarize their role, one can conclude that their responsibility is facilitating the affairs of the people who profess the religion of Islam and is the highest authority after *Yang di-Pertuan Agong* in the Religion of Islam but has no jurisdiction in Islamic Law.

Mufti:

A *Mufti* is one who is recognized as having permission and capability to analyze phenomena of modern aspects and pass an Islamic legal verdict based on the verses of the Qur'ān, the saying of the prophet, known as a fatwa. Thus, this fatwa is the application of *Ijmā'*¹⁴ and *Qiyās*¹⁵. There are many differences of opinions of the actual status of the fatwa, both in the Malaysian Legal system, in Islamic States established by the key principles of Islam, and to the common Muslims of the world.

According to Islamic Jurisprudence the *Fatwa* means: Answer to emerging *Shari'ah* and legal issues. Imam Malik is of the opinion: To tell Islamic ruling without its implementation.¹⁶ After looking into the status of the *Fatwa*, one must understand what constitutes the caliber

of a *Mufti* what his status is. According to one of the most competent of scholars to ever live, *Ibn al-Qayyim al-Jawziyyah*, narrated that Imam Ahmad of the four great Imams mentioned five crucial attributes for one who could pass fatwa. He said:

No man should set himself up to issue *Fatāwa* until he has attained five qualities;

1. He should have good intention, for if he does not have a good intention, he will not be blessed and there will be no blessings in his words
2. He should be knowledgeable, forbearing, dignified and calm
3. He should have a strong grasp of knowledge and preserved in his decisions
4. He should have a strong personality and not be affected by people's criticism
5. He should know what people are like

He added: "If the Mufti is lacking any of these attributes, there will be a "commensurate defect" in such a mufti."¹⁷

Furthermore, *Imām Shafi'ī* said about the characteristics of Mufti:

"One is not permitted to issue fatwa in Allah's faith except who knows Allah's book, its abrogating and abrogated verses, its certain and uncertain ones, its meaning and way of revelation and what is meant by them. Afterwards he has to be visionary in the tradition of the holy Prophet (Peace and Mercy be upon him) and differentiates annulling traditions from annulled ones. He is supposed to have knowledge of the tradition as he knows the holy Qur'an. He is supposed to have vast comprehension of language, poetry and whatever he needs to learn the holy Qur'an and the tradition and uses them justly. After that he should be attentive to the differences of jurists and above all he should possess skill of *Fatwa*. If somebody owns aforesaid characteristics he can issue *Fatawa* in *Halāl* and *Harām*. If he does not, he is not allowed to pass a *Fatawa*."¹⁸

The *Mufti* has been invested with great power that is not witnessed by any other Islamic figure in the world by written law. It is clearly stated in the Administration of Islamic Law (Federal Territories) Act of 1993 that the *Fatwa* issued by a Mufti, given that it is a gazette and is binding upon all Muslims living within Malaysia as part of their religious duty¹⁹ and that it is an authoritative statement that will be recognized by all courts in the federal courts.²⁰

Thus, we see the subsidiary legislative power invested to the Mufti is executable by the law and must be recognized as binding unless stated otherwise in terms of personal opinion. Breaking the "sanctity" of the *Fatwa* will result in "a fine not exceeding three thousand" ringgits and "imprisonment not to exceed two years"²¹. However, the actual status of a mufti among the Muslims is belittled. Seeing that he is a direct public servant implies conflicts of interest as none of his *Fatwas* would pertain to the wrongdoings of the government, thus losing credibility and reduced to the status of a "puppet of the government" or a tool to control the masses according to the ideals of the latter.

Shari'ah High Court:

In the *Shari'ah* High Court's original criminal jurisdiction, it may hear and try cases described in the Act 559, *Shari'ah* Criminal Offence (Federal Territories) Act 1997 which

pertains to offences related to the following.

- Offences related to the Islamic belief system; the propagation of false doctrines, wrongful worship, etc.
- Offences related to the sanctity of Islam and its institutions; disrespecting *Ramadan*, spreading blasphemous doctrines and opinions contrary to fatwa, etc.
- Offences related to decency; prostitution, incest, sexual intercourse outside marriage, etc.
- Miscellaneous offences; enticing married women, encouraging vice, etc.

It can be observed that the majority of the jurisdiction, aside from the issues of acts of blasphemy, presides over matters related to marriage and sexual offences for which the maximum punishment prescribed by the constitution is not to exceed five thousand ringgits or imprisonment for a term of three years or six lashes, or a combination of all.

The civil jurisdiction of the *Shari'ah* court extends to all matters enumerated in the State List given that both parties involved are Muslims (See Appendix I).

In the *Shari'ah* High Court's appellate jurisdiction, it can try any case appealed to the *Shari'ah* High Court by prosecutors or defendants in criminal matters, as well as any party not satisfied with the decision of the *Shari'ah* Subordinate Court in civil matters within fourteen days of the passed decision. That appeal is subject to the civil claim not being less than one thousand Malaysian Ringgits.

***Shari'ah* Subordinate Court:**

The *Shari'ah* Subordinate Court, as implied by the name is the lowest tier of the hierarchy. The court has original jurisdiction of criminal cases and may try to hear all cases pertaining to Muslims that may be tried by the *Shari'ah* High Court for which the maximum punishment is not exceeding two thousand ringgits, or one year of imprisonment. Its civil jurisdiction extends to cases pertaining to parties who proclaim the religion of Islam and given the case matter is not worth more than fifty thousand ringgits. However, it is to be noted that civil jurisdiction may be extended by permission of YDPA.

***Shari'ah* Court of Appeals:**

The *Shari'ah* Court of Appeals heads the hierarchy in its appellate and supervisory jurisdiction. The panel of seven judges is selected by the YDPA and is headed by the Chief *Shari'ah* judge who has expertise in Islamic law due to his preceding ten years as either a *Shari'ah* High Court Judge, kathi, or registrar, or *Shari'ah* prosecutor of a state. The Chief *Shari'ah* Judge selects two members from the panel and upon their discretion²² cases are taken under consideration and trial of this court. They may make any alterations to verdicts passed by the *Shari'ah* High Court, supervise and examine any proceedings made by the inferior courts, thus acting as a regulatory body. In its original jurisdiction, *Shari'ah* Court of Appeals has jurisdiction to hear and determine any appeal by any person convicted. In cases of the dispute between the Chief *Shari'ah* Prosecutor and any decision made by the *Shari'ah* High Court in the exercise of its original criminal jurisdiction, the Court of Appeals gains jurisdiction.²³

***Shari'ah* Prosecutors and Peguam Syarie and Religious Enforcement Officers:**

The *Shari'ah* Prosecutors have the control and direction of all criminal prosecutions and proceedings in criminal cases in all tiers of the Court structure. While the Peguam Syarie

acts as a defense attorney in criminal cases for the defendant. Religious enforcement officers under Act 560 may investigate on order of Court and Prosecutors, execute warrants, and arrest.

Jurisdiction of Islamic Legal System Today: State Issue

With regards to Islamic law and the Constitution, Islam is a state matter except in the federal territories thus there is no uniformity within Malaysia as far as the *Shari'ah* courts and administration goes. As a result of lack of uniformity, the structure of the legal system varies; however, the predominant structure consists of the three tier system consisting of *Shari'ah* Subordinate Court, *Shari'ah* High Court, and *Shari'ah* Appeal Court.²⁴ The appointment of all the judges is an affair in the hands of the *Yang di-Pertuan Agong* and the Sultans as the Heads of Islam with the consultation from the Minister and the *Majlis*. As the *Shari'ah* court is a product of the federal Constitution with very limited power. The Constitution already confers that *Shari'ah* courts "shall have jurisdiction only over person professing the religion of Islam and in respect only of any of the matters included in this paragraph"²⁵. Which are limited to "the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; the *Wakafs*²⁶ and the definition and regulation of charitable and religious endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs. *Zakat*, *Fitrah*²⁷ and *Baitulmal*²⁸ or similar Islamic religious revenue, mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List"²⁹. This concludes that *Shari'ah* Courts are bound to statelty activities and designated to jurisdiction solely in the respective state. That causes problems such as the sentence of one state shall not be binding on the next and the *Fatwa* of one state shall not be binding on the next are some issues that pose problems to the system. To promote a more uniform system, the National Council for Islamic Affairs was established by the Heads of the states. This council advises and recommends the *Majlis* and the Rulers of the state on matters of Islamic law, administration, and Islamic education to promote a more uniform structure and justice that will not be restricted by statelty borders.

Jurisdiction battles :

Though the *Shari'ah* courts were conferred jurisdiction over selected criminal and civil matters pending that all matters involved are from Muslims, Civil courts carried the same jurisdiction but in a greater magnitude. It is clearly stated that the *Shari'ah* courts had jurisdiction in matters under List II of the Federal Constitution, "The *Syariah* (*Shari'ah*) Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution". However this same jurisdiction was given to the Civil Courts in the Courts of Judicature Act 91, 1993 (See Appendix II) when they concurred that cases, civil and criminal occurring within boundaries of Malaysia would fall under the jurisdiction of civil courts, not differentiating between Muslim and non-Muslim. To further conclude that, a provision was added to make null and void "any other written law other than the Constitution" that is inconsistent to the act. Thus, effectively the Civil Courts were able to usurp the jurisdiction of the *Shari'ah* Courts. When this issue was raised by those involved in Islamic proceedings and the supporters of

the Islamic system, the eventual amendment of article 121(1A) of the Federal Constitution read “Courts...shall have no jurisdiction in respect to any matter within jurisdiction of the *Syariah (Shari‘ah)* courts”. The end result came in favor of the *Shari‘ah* Courts and this amendment in 1988 meant that all crimes committed by Muslims under the precept of Islam as conferred by the Federal Constitution and civil discussions shall indefinitely fall to the jurisdiction of the *Shari‘ah* Courts.

Muslims:

According to the laws of Malaysia “[t]he *Syariah (Shari‘ah)* Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by persons professing that religion which may be prescribed under any written law:

Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with any fine exceeding five thousand ringgit or with whipping exceeding six strokes or with any combination thereof”³⁰.

Muslim “means—

1. A person who professes the religion of Islam;
2. A person either or both of whose parents were, at the time of the person’s birth, Muslims;
3. A person whose upbringing was conducted on the basis that he was a Muslim;
4. A person who has converted to Islam in accordance with the requirements of section 85
5. A person who is commonly reputed to be a Muslim; or
6. A person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written;”

If the matter of the Islam a person is in dispute, matter would be decided by his “general reputation, without making any attempt to question the faith, beliefs, conduct, behavior, character, acts, or omissions of that person”³¹.

Conclusion:

Today the Islamic law is reduced to nothing but a series of fines and short prison sentences that have no basis in the *Shari‘ah*. In contrast to the model of the court and justice system in place in Medina about 1,400 years ago, the system today is like a bird with both wings clipped, left to the stubble around the ground. Thus, it is no longer of the occupiers of the sky, but known as something that once would soar. The highest tier of the *Shari‘ah* Court, the Court of Appeals is demeaned lower to having less criminal jurisdiction than the Magistrate court, which is the lowest of the subordinate court (neglecting Penghulus court). It enjoys the jurisdiction invested in it to sentence those found guilty up to five years of imprisonment, a fine of up to ten thousand ringgits, whippings up to 12 strokes or a combination of any of the above. Thus carrying double the jurisdiction of the highest

Shari'ah Court. This humiliated status given to the *Shari'ah* courts under the tight leash of the Constitution cannot be considered a code of Islamic laws, but local Malay laws designed to preserve public order in a society whose members share Islamic Values. As the Islamic legal system is a manifestation of the commandments laid down in the Qur'an, it must be judged according to dictates of the latter. Therein is mentioned;

"Verily, We did send down the Torah, therein was guidance and light, by which the Prophets, who submitted themselves to Allah's Will, judged the Jews. And the rabbis and the priests [too judged the Jews by the Torah after those Prophets] for to them was entrusted the protection of Allah's Book, and they were witnesses thereto. Therefore fear not men but fear Me (O Jews) and sell not My Verses for a miserable price. And whosoever does not judge by what Allah has revealed, such are the disbelievers"³².

"And we ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if anyone remits the retaliation by way of charity, it shall be for him expiation. And whosoever does not judge by that which Allah has revealed, such are the wrong-doers and those who transgress the proper limit"³³.

"Let the people of the Gospel judge by what Allah has revealed therein. And whosoever does not judge by what Allah has revealed (then) such (people) are the rebellious, disobedient to Allah"³⁴.

The verdict upon those who are in position of authority and yet they judge by other than what was revealed by Allah are thus pronounced as disbelievers, transgressors, rebellious and disobedient ones. As stated earlier, the maximum punishment allowable to crimes under the *Shari'ah* Court's jurisdiction are three years' imprisonment, five thousand ringgits fine, and six lashes, though the crimes in subject are carry an enormous punishment in the Qur'an and the *Sunnah* (See Appendix III). Thus, the conclusions, *Shari'ah* Courts do know judge by what Allah has revealed except in matters of civil cases. It is the writer's conclusion that the *Shari'ah* Courts must change their title to "Muslim Family Law" court and do everything prescribed under the *Shari'ah* to establish the punishments and limits dictated therein. It could be started with changing the Constitution, which clearly states, "[t]his Constitution is the supreme law of the Federation and any law passed after the *Merdeka* Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". This is the same phrase put in different wording that Pharaoh one of the biggest transgressors in the history of the earth said;

"I am your lord, most high"³⁵ :

Pharaoh did not claim to be the creator of his subjects; rather he proclaimed that his law was supreme.

"So Allāh, seized him with punishment for his last [i.e. his saying: "I am your lord, most high") (see Verse 79:24)] and first [(i.e. his saying, "O chiefs! I know not that you have a god other than I" (see Verse 28:38))] transgression"³⁶.

Whereas, the holy Qur'an says that the ultimate power of decision belongs to Allah the Almighty The Decision belongs to none but Allah. He relates the Truth and He is the best of

all judges.³⁷

“Behold, His is the judgment.”³⁸

In Surah Al-ʿAṣṣaf Allah the Almighty says:

“Lo! To Him alone belong the creation and the command.”³⁹

In Surah Al Imran:

“Say: O Allah, O Lord of the Kingdom, You give kingdom to whom You will, and take kingdom away from whom You will; and You bestow honour on whom You will, and bring disgrace to whom You will.”⁴⁰

“To Allah belongs the kingdom of the heavens and the earth. Allah is powerful to do everything.”⁴¹

It is evident from above mentioned verses of the holy Qurʿan that the final decision and supreme power belong to Allah the Lord of the world. To run the measures of the world He made human being His vicegerent and said in His Book:

“I am going to a deputy on the earth.”⁴²

So, human being is deputy of Allah the Merciful to implement His commands. If human being makes his own commands and rules and desires to rule in his own way without consulting Allah’s orders, he will not be considered Allah’s deputy.

APPENDIX I(List II - State List):

1. “Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs. Zakat, Fitrah and Baitulmāl or similar Islamic religious revenue, mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah (Sharīʿah) courts, which shall have jurisdiction only over person professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine Malay custom.”

Appendix II (Courts of Judicature act 91 1938 (CRIMINAL):

Criminal jurisdiction 22.

1. “The High Court shall have jurisdiction to try—
(a) All offences committed—
(i) Within its local jurisdiction;

- (ii) On the high seas on board any ship or on any aircraft registered in Malaysia;
- (iii) By any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
- (iv) By any person on the high seas where the offence is piracy by the law of nations;

Courts of Judicature act 91 1938 (CIVIL)

Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include—

- (a) Jurisdiction under any written law relating to divorce and matrimonial causes;
- (b) The same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act, 1981;
- (c) Jurisdiction under any written law relating to bankruptcy or to companies;
- (d) Jurisdiction to appoint and control guardians of infants and generally over the person and property of infants;
- (e) Jurisdiction to appoint and control guardians and keepers of the person and estates of idiots, mentally disordered persons and persons of unsound mind; and
- (f) Jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property within the territorial jurisdiction of the Court and to alter or revoke such grants.”

APPENDIX II (Punishments prescribed in Shari‘ah)

- 40-80 lashes of the alcohol drinker.⁴³
- Qisās – wound for wound, eye for eye, blood for blood [if one is killed without any authority from Shari‘ah (for any crime of in a state of war) the brother of the murdered is subject to three options; blood money (the price of 100 camels), killing the murderer in retaliation, forgiveness for the murderer.

“Oh you who believe! Al-Qisās (the Law of Equality in punishment) is prescribed for you in case of murdered people: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness. This is alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment.”⁴⁴

- The 100 lashes for the despicable act of sex outside of marriage in the case of unmarried people.

“The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment.”⁴⁵

- The stoning to death of the despicable act of sex outside of marriage in the case of married people.

Bukhari: Volume 6: Page No 2499 :: Hadith 6433 Narrated Ibn 'Umar:

“A Jew and a Jewess were brought to Allah's Prophet on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." 'Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold! The Divine Verse of the Rajam was under his hand. So Allah's Prophet ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn 'Umar added: So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess.”

- The cutting off the right hand of the thief

“Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise”.⁴⁶

- The eighty lashes for accuser of fornication

“Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not accept their any evidence any more. They are the sinners.”⁴⁷

- The cutting off the limbs of those who spread disorder on the earth “Those who fight against Allah and His Messenger and run about trying to spread disorder on the earth, their punishment is no other than that they shall be killed, or be crucified, or their hands and legs be cut off from different sides, or they be kept away from the land (they live in). That is a humiliation for them in this world and for them there is a great punishment in the Hereafter.”⁴⁸

- No ruler is allowed in Islam to pardon anyone's retribution. Allah says:

“Oh you who believe! *Al-Qiṣāṣ* (the Law of Equality in punishment) is prescribed for you in case of murdered people: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness.”⁴⁹

The holy Prophet (Peace and Mercy be upon him) said:

“Ayesha (May Allah be pleased with her) narrates: Qurashites were worried about the Makhzūmi woman who stole and were saying: Who would talk to the Messenger of Allah (Peace and Mercy be upon him) about her? And were saying: Who could dare to do so except Osama son of Zaid, who is beloved to the Messenger of Allah (May Allah be pleased with him). So, Osama talked to him. The Messenger of Allah (May Allah be pleased with him) said: Do you intercede in the punishment described by Allah? After that he stood and addressed people

and said: People before you perished on account of forgiving privileged one when he would steal and punishing poor one when he would steal. By Allah! If Fatima daughter of Mohammad steals, I will cut off her hand.”⁵⁰

The right of forgiveness returns to one who is affected:

“Anus states: Rabi who is daughter of Nazar break teeth of a girl. So, they (relatives of the culprit) wanted to pay compensation and sought forgiveness. But the offended ones rejected. The former came to the Prophet (Peace and Mercy be upon him), so, he gave decision of *Qisās*. Anus bin Nazar said: Would her teeth be broken? O Messenger of Allah! (He himself further said:) No, by Whom Who sent you with the truth! her teeth would not be broken. The Prophet (Peace be upon him) said: O Anus! The described punishment by Allah is *Qisās*. Later on offended ones agreed and forgave. Afterwards, the Prophet (Peace be upon him) said: There are Allah’s slaves, if they swear to Allah, he does the same.”⁵¹

Here, the holy Prophet (Peace and Mercy be upon him) did not pardon her despite he was the ruler and chief judge of the Muslim World and keep the right to the offended ones.

Endnotes

¹ The Constitution of Malaysia, Article 34).

² The Constitution of Malaysia, Article 42).

³ “Laws of Malaysia (1993)”, *Administration of Islamic Law (Federal Territories, Section 29, Act 505)*.

⁴ “Laws of Malaysia (1993)”, *Section 4(1), Act 505*.

⁵ “Laws of Malaysia (1993)”, *Section 10, Act 505*.

⁶ “Laws of Malaysia (1993)”, *Section 5, Act 505*.

⁷ “Laws of Malaysia (1993)”, *Section 7, Act 505*.

⁸ “Laws of Malaysia (1993)”, *Section 8A*

⁹ “Laws of Malaysia (1993)”, *Section 72, Act 505*.

¹⁰ Established houses of prayer on land dedicated specifically for that purpose.

¹¹ “Laws of Malaysia (1993)”, *Section 74, Act 505*.

¹² “Laws of Malaysia (1993)”, *Section 765, Act 505*.

¹³ “Al-Qur’ān”, *Sura At-Tawbah 9:17-18*.

¹⁴ Consensus of the Muftis on any fatwa is called Ijma.

¹⁵ Analogy is Qiyās, Which means inference of Mufti in any novel issue.

¹⁶ S. A. Jaib, *Alqamoos Alfiqhi*, 1988, Darul-Fikr Damascus, 1, 281.

¹⁷ Abin ul Quyyam Al Jozi, *Alaam ul Mowaqqaieen*, Darul Hiyal, Barut, 4/199, 1973.

¹⁸ Ibid., 1, 46.

¹⁹ “Laws of Malaysia (1993)”, *Section 34(3)*

²⁰ “Laws of Malaysia (1993)”, *Section 34(4), Act 505*

²¹ “Laws of Malaysia (1997)”, *Act 559 Syariah Criminal Offences (Federal Territories) Section 12*.

²² Appeals to Shari’ah Court of Appeals require the consent of the said court.

²³ “Laws of Malaysia (1997)”, *Act 560 Syariah Criminal Offences (Federal Territories), Section 151*.

²⁴ “(Laws of Malaysia (1993)”, *Section 34(3), Act 505)*

²⁵ “The Federal Constitution of Malaysia”, List II State List, page 181.

²⁶ Shari’ah donations.

- ²⁷ Islamic donation, which is given in Ramadan.
- ²⁸ Islamic Revenue Department.
- ²⁹ "The Federal Constitution of Malaysia", List II State List, page 181.
- ³⁰ "The Laws of Malaysia,(1965)", *Section 2, Act 355*.
- ³¹ "The Laws of Malaysia, (1984)", *Act 303*.
- ³² "Al-Qur'ān", *Sura Al Maidah*, 5:44.
- ³³ "Al-Qur'ān", *Sura Al Maidah*, 5:45.
- ³⁴ "Al-Qur'ān", *Sura Al Maidah*, 5: 47.
- ³⁵ "Al-Qur'ān", *Sura An Naziat*, 79: 24.
- ³⁶ "Al-Qur'ān", *Sura An Naziat*, 79: 25.
- ³⁷ "Al-Qur'ān", *Surah Al Anaam*, 5: 7.
- ³⁸ "Al-Qur'ān", *Surah Al Anaam*, 57: 62.
- ³⁹ "Al-Qur'ān", *Surah Al Aaraaf*, 54.
- ⁴⁰ "Al-Qur'ān", *Surah Al Imran*, 26.
- ⁴¹ Ibid., 189. 189.
- ⁴² "Al-Qur'ān", *Al Baqara*, 30.
- ⁴³ "Bukhari", Book 8 : Volume 81 : Hadith 771.
- ⁴⁴ "Al-Qur'ān", *Sura Al-Baqarah*, 2: 178.
- ⁴⁵ "Al-Qur'ān", *Qur'ān*, An-Nur 24: 2.
- ⁴⁶ "Al-Qur'ān", *Al-Ma'idah*, 5: 38.
- ⁴⁷ "Al-Qur'ān", *Surah Al Nur*: 4.
- ⁴⁸ "Al-Qur'ān", *Al Ma'idah*, 34.
- ⁴⁹ "Al-Qur'ān", *Sura Al-Baqarah*, 2:178.
- ⁵⁰ "Al Bukhari", Volume 3, Page No 1282, Hadis No 3288.
- ⁵¹ "Al-Bukhari", Volume No 6, Page No 52, Hadis No 4611.